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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN LITHUANIA**

-- 2014 --

**16-18 June 2015**

*This report is submitted by the Lithuania to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 16-18 June 2015.*

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## Executive Summary

1. Organisations rarely admit doing “more of the same” when change is all the world seems to require. And yet, this characterises well the Lithuanian Competition Council’s (KT or Competition Council) work in 2014. We completed more and larger investigations against state and private actors, stood up to the challenge of the rising number of problematic mergers and reached further with our advocacy.
2. Investing in competition enforcement continues to provide a good return for the money: according to the conservative OECD methodology, one Euro put in our operations brought a seven-fold direct financial benefit to consumers.
3. Last year the KT focused on the energy, food and drinks, waste management, banking and insurance, and transport sectors.
4. In the energy sector, numerically inclined must have certainly noticed the ~35,651,269 euros fine imposed on Gazprom for failing to comply with merger conditions by hindering Lithuanian buyers from obtaining natural gas from alternative sources of supply. A large retailer of petroleum products received a fine of ~3,422,642 euros for non-notified mergers. Finally, the agency issued SOs to members of a co-generation power plants supply cartel, one of which had blown the whistle.
5. In food retail, the KT fined Maxima, the largest food retailer, and Mantinga, a major supplier of frozen bakery, ~16,871,872 euros and ~4,426,784 euros respectively for engaging in RPM practices. This decision sent a warning to all retailers and their suppliers, and since its adoption the retailers had been engaged in undercutting price reductions.
6. In contrast, members of the strong beer cartel escaped fines, as their agreement not to produce beer of a certain strength had in the early 2000 years been notified to the KT and received no outright prohibition at the time, which created legitimate expectations for the undertakings. Still, an infringement of agreement of the reduction of supply was found and the agency refused to accept the “social responsibility” justification.
7. In December, the agency cleared a merger between two large producers of alcoholic drinks subject to structural commitments. In the same month, the KT also launched a market investigation into the dairy sector.
8. Moving from food to waste, the agency continued challenging municipalities awarding waste management contracts to municipal companies without running a competitive selection process. In addition, a market investigation in this field had been completed with the findings published in May 2015.
9. The municipal theme continued in the field of transport as the agency found the Vilnius Municipality distorting competition by favouring its own taxi firm. Elsewhere, the KT closed a suspected pricing abuse investigation by accepting commitments from the Lithuanian National Road Carriers Association. Finally, a merger between two largest bus fleet operators carrying passengers on local, long-distance and international routes was abandoned after it had been challenged by the KT.
10. In the insurance sector, the agency cleared the merger between Lietuvos draudimas and PZU – both major insurance companies in Lithuania and Poland respectively – subject to structural remedies.
11. In a re-opened procedure in *Cash Handling Services*, the agency found the commitments offered by G4S Lietuva, the exclusive supplier to three largest banks, falling short of the statutory standards and re-issued the fine of ~2,733,375 euros.

12. The KT's enforcement involving well-known firms operating on markets that are of direct relevance to consumers, has in itself contributed to competition advocacy, allowing the number of media references to double. Still, there was more advocacy to come.

13. First, we stepped outside the capital by launching regional competition road-shows for private and public actors.

14. Then, we have twice increased our participation in advocacy events both organised independently by our authority or in partnership with others.

15. Finally, by presenting for public consultation new draft rules on notifications of concentrations we continued to provide more clarity to businesses over the procedures of submitting the notifications of concentrations.

## **1. Changes to competition laws and policies, proposed or adopted**

### ***1.1 Summary of new legal provisions of competition law and related legislation***

16. **8 January.** The amendments to the Law on Competition of the Republic of Lithuania came into force. The new amendments introduced a new order of paying fines for the infringements of the Law on Competition. The amendments provide for the possibility not to pay the fine imposed by the Council until the final ruling of the court is delivered. However, if the court upholds the Council's decision, undertakings will have to pay both the fine and a 6% annual interest. With this amendment, undertakings are encouraged to consider whether they actually want to appeal the decision of the Council for reasons other than benefitting from a suspension of the payment.

### ***1.2 Other relevant measures, including new guidelines***

17. The Council is currently revising the existing order to submit a notification of concentration before Competition Council. The public consultation was launched before the end of 2014, 7 responses received and currently being analysed by the KT's experts. A new order is expected to be more clear, time saving and handy for businesses submitting a notification of concentration. A new order is expected to be released by the 3Q of 2015.

18. The Council is currently revising the existing Leniency Guidelines in order to introduce more transparency and clarity to the leniency process.

19. 2 checklists prepared on how to recognise state aid and to check if undertakings are connected in terms of *de minimis* state aid.

### ***1.3 Government proposals for new legislation***

20. **15 July.** The Parliament introduced amendments to the Law on Competition. According to the proposed amendments, the maximum fine for implementing a non-notified merger should account for no more than 43,443 euros, provided the merger did not significantly restrict competition within the relevant market. On 29 July, the President of the Republic of Lithuania vetoed the amendments and returned the bill for reconsideration emphasizing that amendments would create possibilities for large cap companies to escape fines adequate to the committed infringements. On 18 September, 79 out of 99 members of the Parliament supported the President's veto and left the Law on Competition unchanged.

## 2. Enforcement of competition laws and policies

2.1 *The Council prioritises investigations based on the expected impact of its interventions on consumer welfare;*

2.2 *Sector-wise, in 2014 the Council focused on the following:*

### 2.2.1 *Energy*

21. KT imposed a fine of ~35,651,269 euros on Gazprom for failing to comply with merger conditions by hindering Lithuanian buyers from obtaining natural gas from alternative source of supply;

22. KT issued SOs against three suppliers of cogeneration power plants suspected of a cartel to fix minimum margin of purchasing energy generator sets. The infringement [decision](#) was later issued on 11 February 2015 imposing a total fine of ~637,500 euros. One of the undertakings benefited from immunity under a leniency program;

23. KT issued SO against the Šiauliai city municipality suspected of having prevented independent heating producers from entering the market. The infringement [decision](#) issued on 31 March 2015;

24. KT fined Lukoil Baltija -3,422,642 euros for implementing non-notified mergers and ordered the company to eliminate the breach.

### 2.2.2 *Waste management*

25. Completed a market study of the waste management sector; The final report released in May 2015;

26. KT issued three infringement decisions and one SO against municipalities finding or suspecting them to be in breach of Article 4 of the Law on Competition (Article 4 requires public administrative bodies to protect fair competition and not to discriminate undertakings).

### 2.2.3 *Food retail*

27. KT fined the largest food retailer and a major supplier of frozen bakery products ~16,871,872 euros and ~4,426,784 euros respectively for engaging in RPM practices lasting for 10 years;

28. KT issued an infringement decision against the Lithuanian Guild of Breweries and its members for agreeing not to produce beer of certain strength. The agency refused to accept a public health justification raised by the cartel members;

29. KT launched a dairy market study, expected to be completed by the 3Q of 2015.

### 2.2.4 *Transport:*

30. KT accepted commitments to close the investigation concerning the prices of TIR Carnets sold by the Lithuanian National Road Carriers Association LINAVA (the Association) to the members and non-members of the Association. The Council suspected that the Association, being the only body authorised to issue TIR Carnets, could have abused its dominant position by applying different prices of TIR Carnets sold to the members and non-members of the Association. To address the Council's concerns, the Association submitted commitments to uniform prices of TIR carnets sold to the members and non-members of the Association.

31. KT found that Vilnius City Municipality favoured a municipal company *Vilnius veža* by granting subsidies and supporting with various privileges and, thus, discriminated against private companies.

**2.3. By types of infringement, the Council mainly focused on:**

**2.3.1 Bid rigging in public procurement**

- Infringement decision against five construction companies
- 1 investigation in the pipeline in 2014
- Advocacy: a series of seminars for public administrative bodies and businesses

**2.3.2 Competition infringements and state aid by public administrative bodies**

- 5 infringement decisions and 1 statement of objections issued
- State Aid register modernised
- 2 checklists prepared on how to recognize state aid and to check if undertakings are connected in terms of *de minimis* state aid
- Advocacy:
  - State Aid seminars (13) and 2 workshops to municipalities on benefits of competition
  - Four op-eds in the biggest business daily and a popular weekly on municipalities ignoring principles of competition.
  - annual competition conference organised by KT and the biggest business daily was dedicated to competition and public administrative bodies

**2.4 In terms of sectorial priorities for 2015, the Council will focus on the following:**

**2.4.1 Energy**

32. Decision concerning anticompetitive agreement in heat and biofuels producing and supply sector expected this year. SO issued 8 April 2015;

33. Appeal of KT's decision establishing a failure to comply with merger conditions to be examined in court in June 2015;

34. KT fined Lukoil Baltija ~3,422,642 euros for implementing non-notified mergers and obligated the company to eliminate the breach. The decision was appealed to court, the outcome to be expected by the end of this year.

**2.4.2 Food retail**

35. The decision establishing the largest food retailer and a major supplier of frozen bakery products for engaging in RPM practices was appealed by both parties to court. The outcome is to be expected this year;

36. To complete the study examining the dairy sector by the end of 3Q. The market study will be released together with Council's recommendations for stakeholders.

2.4.3 *Waste management*

- One investigation in the pipeline;
- Outcome of five appealed KT's decisions to be expected in courts this year.

2.4.4 *Transport*

- Three investigations concerning suspected anticompetitive decisions by public administrative bodies are ongoing.

2.5. *Summary of activities*

37. In 2014 the Council (KT) launched 11, continued 21 investigations. Issued 11 decisions.

2.5.1 *Launched*

- Anti-competitive agreements – 2
- Abuse of dominance – 1
- Unnotified mergers – 1
- Competition restricting actions by public administrative bodies – 7

2.5.2 *Continued*

- Anti-competitive agreements – 2 and 1 re-opened infringement decision in the financial services sector
- Abuse of dominance – 4
- Unnotified mergers – 3
- Breach of merger conditions – 1
- Competition restricting actions by public administrative bodies – 8
- Failure to comply with cease and desist order by public administrative bodies – 2

2.5.3 *Decisions issued*

- Anti-competitive agreements – 3 and 1 re-issued infringement decision in the financial services sector
- Unnotified mergers – 1
- Identified merger violation – 1
- Competition restricting actions by public administrative bodies – 5

38. According to national laws the Council's resolutions may be appealed both on procedural and substantive grounds.

39. 17 Competition Council's decisions have been appealed in 2014. As of 31 December 2014 there were 47 Council decisions, including those of procedural nature, under examination at courts of various instances.

2.5.4 *In 2014:*

- 9 Competition Council decisions were upheld by courts;
- 2 partly amended;
- 3 cases terminated;
- 3 annulled.

2.5.5 *Brief on certain court cases*

40. **10 February.** Vilnius Regional Administrative Court upheld the Council's decision to fine SPLIUS 2,896 euros for misleading advertising. The Council found that SPLIUS used misleading statements to promote the services of digital and cable television. The statements included: "free digital television (till 1 November)", "free high-definition digital television", "free till 1 November". These statements failed to inform consumers that in order to benefit from the conditions advertised, additional obligations of long term contracts and certain fees were imposed on the consumers. The fees indicated in the advertisements were valid only for a certain period of time, upon the end of which higher fees were applied.

41. **13 February.** The Supreme Administrative Court of Lithuania upheld the Council's decision to fine Lukoil Baltija ~5,792 euros and Tūta ~289 euros for misleading advertising. The Council found that the advertising campaign Sabonis 220 promoted by Lukoil Baltija and Tūta was misleading. Consumers purchasing petrol or other products in LUKOIL petrol stations for ~8.69 euros and more were promised stickers allowing to purchase certain goods for a special price. However, already before the partway of the campaign one of the advertised goods was no longer available for purchase. Such an advertisement could have mislead consumers and determined their choice to purchase petrol in LUKOIL petrol stations.

42. **7 April.** The Supreme Administrative Court of Lithuania upheld the Council's decision, according to which, the Lithuanian Shipbrokers and Agents Association and 32 members of the Association were held to have entered into an anti-competitive agreement setting minimum tariffs for shipping agency services. Even though some of the fines were reduced, the Court upheld the Council's position regarding the anti-competitive behaviour of the Association and its members.

43. **25 April.** The Supreme Administrative Court of Lithuania upheld the Council's decision to fine Komeksimas ~7,182 euros for misleading advertising. The Council found that the advertisement promoted on the website of Komeksimas was misleading since the prices of goods offered online were compared with false market prices or former prices of the same goods. According to the Court, the advertisement implied substantial savings by offering goods at reduced prices seeking to provoke consumers' reaction. Komeksimas failed to prove that non-discount prices had been applied before.

2.6 *Description of significant cases, including those with international implications.*

44. **4 March.** The Council found that the Lithuanian Guild of Breweries and its members: Gubernija, Kalnapilio – Tauro grupė, Restoranas Apynys, Rinkuškiai, Švyturys – Utenos alus and Volfas Engelman concluded an anti-competitive agreement. The Lithuanian Guild of Breweries and the brewers failed to convince the Council that an agreement not to produce beer of a certain strength was based on public health concerns. The Council decided not to impose sanctions as in the course of the investigation the parties to the agreement had terminated competition-restricting actions, whereas in its 2008 letter to the Guild the Council had declared having no comments on Guild's Code of Ethics.

45. **4 December.** The Council found that the food retail chain MAXIMA LT and frozen bakery producer Mantinga had been engaged in RPM for a decade. The provisions of the supply contracts concluded between MAXIMA LT and Mantinga, their internal correspondence and other factual circumstances revealed a long-lasting agreement not to sell Mantinga's bread and other bakery goods below a so-called base price, fixed on Mantinga's price list. For a decade long breach MAXIMA LT was fined ~16,871,872 euros and Mantinga ~4,426,784 euros.

46. **10 June.** The Council imposed a fine of ~35,651,269 euros on Gazprom for the failure to comply with merger conditions. In 2004, the Council allowed Gazprom to acquire Lietuvos dujos shares subject to condition that Gazprom would not hinder Lithuanian buyers from purchasing natural gas from other suppliers. However, Gazprom's refusal to negotiate with Lietuvos energijos gamyba a swap agreement for 2013 – 2015 had created obstacles for Lietuvos energijos gamyba to purchase natural gas from another provider and, thus, breached the merger condition. Gazprom appealed the Council's decision to Vilnius Regional Administrative Court.

47. **26 November.** The Council issued a Statement of Objections to firms suspected of anti-competitive agreement in the market of combined heat and power plant construction. The Council concluded in its preliminary assessment that two companies, namely, Lukrida and Manfula, sought to restrict competition in the market of combined heat and power plant construction. The companies used a third-party company Envija to fix a part of the price for internal combustion engines. Lukrida and Manfula set the minimum price for internal combustion engines sold to the two companies by Envija.

## 2.7 *Mergers and acquisitions*

### 2.7.1 *Statistics on number, size and type of mergers notified and/or controlled under competition laws;*

48. KT received 52 filing between 1 January and 31 December 2014:

49. 8 mergers led into an in-depth review, 49 mergers were cleared.

	2014	2013	2012
Received filings	52	31	31
Mergers cleared	49	29	29
Mergers cleared with remedies and commitments	2	0	0
Challenged mergers	3	2	2
Mergers withdrawn	1	2	2
Partly cleared mergers (permission to individual concentration actions)	0	1	0

### 2.7.2 *Summary of significant cases*

50. **3 September.** Kautra abandoned its intentions to acquire the shares of Tolimojo keleivinio transporto kompanija. The decision was based on the Council's preliminary assessment that the merger could create or strengthen the dominant position, or significantly restrict competition within certain markets of regular passenger carrying services on long-distance il routes, wherein both companies operate.

51. **9 October.** The Council cleared an acquisition of 100 per cent of Lietuvos draudimas shares by PZU provided the latter meets the merger conditions imposed by the Council. After preliminary assessment the Council found that the merger would restrict competition within the following two markets: the market of the insurance of land vehicles, except for the railway vehicles, and the market of property insurance. Hence, the merger was cleared with remedies. The Council also appointed a trustee who will observe and evaluate whether PZU S.A. fully meets the conditions imposed by the Council.

52. **5 December.** The Council cleared an acquisition of up to 100 per cent of Įmonių grupė Alita shares by Mineraliniai vandenys provided the latter meets the merger conditions imposed by the Council. In the preliminary assessment the Council concluded that the merger could create or strengthen the dominant position, or significantly restrict competition within the markets of vodka production and sale, as well as bitters production and sale. The Council cleared the merger upon the condition that Mineraliniai vandenys will transfer the business of Įmonių grupė Alita related to the sales and production of vodka and bitters in Lithuania. The Council also appointed a trustee who will observe and evaluate whether Mineraliniai vandenys fulfills the obligations imposed by the Council.

**3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies**

53. According to the Law on Competition the KT is empowered to carry out expert examination of draft laws and other legal acts, issue opinions regarding the effect on competition to the Parliament of the Republic of Lithuania and the Government of the Republic of Lithuania as well as submit proposals to the Government of the Republic of Lithuania to amend legal acts restricting competition.

54. The Council closely kept an eye on national legislation and having reviewed 206 legal drafts which is more than 20 per cent more than previous year.

55. KT submitted proposals to:

- Law on Advertising. KT submitted comments concerning prohibition of food supplements' advertisements.
- Law on Alcohol Control. KT delivered an opinion concerning a proposal to increase the age limit for alcohol buyers.
- Law on Health Insurance. KT submitted comments and opinions on health protection services financed by compulsory health insurance.
- Law on Fishery. KT submitted comments concerning fishery quota.
- Law on radio and television. KT submitted a proposal to improve rules of competition whilst choosing service provider.
- Law on Pharmacy. KT submitted comments concerning prohibition to advertise reduced prices of pharmaceutical products.
- Code of Road transport. KT delivered comments and recommendations concerning transport schemes and procedures to choose a service provider.
- Law on Transport activities. KT submitted a proposal to amend Transport Code and lay down that municipalities are obliged to choose public transport providers using competitive procedure and in line with Regulation 1370/2007/EC.
- Law on Waste management: KT proposed to annul existing boundaries for packaging waste organizations to establish. In addition, submitted an observation on activities exercised by regional waste management centres.

56. 45 per cent of decisions issued of Law on Competition violations in 2014 were against public administration bodies. Competition restricting decisions by municipalities in transport and waste management sectors were in the focus of KT attention in 2014:

- KT issued three infringement decisions and one SO in household waste sector against municipalities finding or suspecting them to be in breach of Article 4 of the Law on Competition (Article 4 requires public administrative bodies to protect fair competition and not to discriminate undertakings). Municipalities were found or suspected choosing a service provider without competitive selection procedure and thus favouring some companies against the others;
- In October the Council found that having established and favoured a municipal taxi company *Vilnius veža*, Vilnius City Municipality discriminated other market participants. The KT obliged the Municipality to terminate the infringement;
- 2 workshops to municipalities on benefits of competition organised;
- Four op-eds in the biggest business daily and a popular weekly on municipalities ignoring principles of competition;
- Annual competition conference organised by KT and the biggest business daily was dedicated to competition and public administrative bodies;
- Completed a market study of the waste management sector; final report published in May 2015.

#### **4. Resources of competition authorities**

57. The Council allocates its resources with the view of maximising consumer welfare. According to the 2012 Council's Notice on Enforcement Priorities, in order to decide whether a matter constitutes an enforcement priority, the Council assesses three principles:

- the expected impact of its intervention on effective competition and consumer welfare,
- the intervention's strategic importance;
- the rational use of resources (the resources need are compared to the expected success of the intervention).

58. Similar prioritising tool is being used in advertising cases since 2013.

#### **4.1 Resources overall (current numbers and change over previous year):**

##### **4.1.1 Annual budget (in your currency and USD):**

- EUR 1.61 m, USD 1.75 m (2014)
- EUR 1.29 m, USD 1.40 m (2013)

4.1.2 *Number of employees (person-years):*

- economists: 9 The Council employed four dedicated economists. One of them is the Head of Economic Analysis Group and holds a PhD in Economics, while the other three were embedded within the investigative divisions. In addition, five more economists worked as case-handlers.
- lawyers:31
- other professionals:7
- support staff:25
- all staff combined: 68 plus 4 Council members (including the Chairman)

4.1.3 *Human resources (person-years) applied to:*

- Enforcement against anticompetitive practices: 45
  - Among them:
    - Merger review and enforcement of abuse of dominance: 10
    - Anti-cartel: 11
- Advocacy efforts and other:
  - 4 Council members (all areas)
  - 1 Chief economist
  - 2 IT specialists (mostly anti-cartel, but also dominance and mergers)
  - 8 lawyers in the Legal Division (all areas)
  - 7 lawyers in the Division of Unfair Commercial Practices
  - 9 members of staff dealing with competition restrictions imposed by public administration bodies

4.1.4 *Period covered by the above information:*

- 1 January 2014 to 31 December 2014

**5. Summaries of or references to new reports and studies on competition policy issues**

59. Annual report 2014: [http://kt.gov.lt/en/annual/2014\\_eng.pdf](http://kt.gov.lt/en/annual/2014_eng.pdf)